

EXHIBIT 2
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SB 128

Senate Bill 128
March 27, 2007
Presented by M. Jeff Hagener
House Fish, Wildlife & Parks Committee

Mr. Chairman and committee members, I am Jeff Hagener, Director of Montana Department of Fish, Wildlife & Parks (FWP).

Productive fisheries are vital to Montana's way of life and economy. Passage of S.B. 128 would enhance the Department of Fish, Wildlife and Parks' ability to maintain and restore viable fisheries. The bill renews FWP's ability to lease water for instream flow. It would allow the Department to repeatedly renew water leases, and to permanently dedicate water rights that it owns to instream flow on 12 stream reaches.

Instream water leasing was first authorized in 1989. FWP has pursued leasing opportunities with willing lessors on seriously dewatered streams with high fishery restoration potential. FWP's leasing statute was originally set to expire in 1999. In its Final Report to the 56th Legislature EQC concluded that the Department had been very careful in obtaining leases. The leasing study was reauthorized for 10 additional years.

FWP's approach continues to be cautious. To date, FWP has developed 16 instream flow leases. The leases have enhanced spawning, rearing and recruitment of fish in tributaries of the Blackfoot, Bitterroot, Jefferson, Clark Fork and Yellowstone Rivers. Leasing is a valuable tool, but it is not the correct tool for every job.

S.B. 128 would remove the limitations on lease renewals. Currently, FWP is limited to a single 10-year lease and one 10-year renewal. The Department has already lost one effective lease due to this limitation.

S.B. 128 would extend the leasing program until 2019. The leasing program will expire in 2009. This bill would extend FWP's authority to lease water for instream flow until 2019.

S.B. 128 would allow permanent dedication of water to instream flow on 12 stream reaches until 2019. In the Upper Clark Fork, FWP is in the process of purchasing, as part of the Dutchman wetlands acquisition, sufficient water rights in Warm Springs, Dutchman and Lost Creeks to protect instream flows in these tributaries and anticipates obtaining additional water rights in other tributaries to the Upper Clark Fork River as part of a Natural Resource Damage settlement. This water will be critical to the restoration of the Upper Clark Fork River Basin. With the current limitations, this restoration will only last 20 years. This bill would allow FWP to permanently change consumptive water rights to instream flow on twelve stream reaches. The Upper Clark Fork will be FWP's highest priority area for using this authority. The authority will lapse in 2019. This will give the Legislature an opportunity to renew the program and determine whether or not to renew it.

S.B. 128 includes safeguards that protect senior water right holders. Foremost is the requirement that any change to instream flow, whether temporary or permanent, must comply with sections 85-2-307- 309, 401 and 402. The statutes require public notice and approval by DNRC, but most importantly, they require that the applicant show there will be no adverse affect to any other water user. Other water users may object to the change, but when a lease is renewed, or up to 10 years after it approves a permanent conversion, DNRC may modify or revoke the change authorization if another appropriator submits new evidence that his or her water right is adversely affected. This ten-year period will allow other water users on a stream to determine whether they are adversely impacted based on their real world experience. The "test drive" feature will provide a virtual guarantee that other water users will not be adversely affected.